

**** AGENDA ****

City Commission Study Session

Wednesday, July 8, 2020

Municipal Court Room

518 Mechanic Street

10:00 a.m.

- CIP Review of the Following Departments: *Water, Sewer and Solid Waste Department*
- Review Personnel Funds
- Legislative Update
- Discuss Lifetime Dirty Kanza Sponsorship Agreement

Tentative Agenda for July 15th Commission Meeting at 7:00 p.m.

- City Commission Reports and Comments
- Consent Agenda
- Public Comment
- Report from City Manager on City Activities

**If you need accommodations due to a disability to participate in this event, meeting, or activity, or alternative format of written materials contact Jeff Lynch, City of Emporia ADA Coordinator at least 48 hours before the event at 620-343-4275 or jlynch@emporia-kansas.gov*

Memo

TO: City Commission
FROM: Janet Harrouff 
DATE: July 3, 2020
SUBJECT: Capital Improvement Plan – continued discussion

The CIP requests for 3 departments will be discussed at the study session on July 8th. The department head will be available at the meeting.

The items requested for each department are provided with the funding source noted. The departments presenting are:

Water Fund – Distribution & Treatment Plant
Wastewater Fund – Distribution & Treatment Plant
Solid Waste Fund – Collections, Transfer Station & Recycling

<u>Department</u>	<u>Year</u>	<u>Description</u>	<u>Amount</u>	<u>Pmt per Year</u>	<u>Years to Bond</u>	<u>Funding Source</u>
Water Distribution	2020	Replace 2000 1/2 ton pickup	\$50,000			Water Fund
Water Distribution	2020	Water main 6th Ave Commercial to Merchant	\$46,000			Water Fund
Water Plant	2020	Repair flat roofs on main building and chemical free building phase II	\$184,666			Water Fund
Water Distribution	2021	Replace 1999 dump truck bed only	\$40,000			Water Fund
Water Plant	2021	Alum Feeder System	\$60,000			Water Fund
Water Plant	2021	Repair stem and install fencing at elevated tower on 12th Ave	\$75,000			Water Fund
Water Plant	2021	Replace 1982 JD Tractor mower & loader	\$45,000			Water Fund
Water Plant	2021	Replace 2002 1/2 Ton 4WD Pickup Truck	\$45,000			Water Fund
Water Distribution	2021	Cleanwell Emergency Fill Line	\$60,000	new item		Water Fund
Water Distribution	2022	Replace a 2002 JD 310SG Backhoe	\$105,000			Water Fund
Water Plant	2022	Clarifier Upgrade to improve performance	\$400,000			Water Fund
Water Plant	2022	Replace turbidity meters	\$70,000			Water Fund
Water Plant	2022	Upgrade communication for elevated tower	\$50,000			Water Fund
Water Distribution	2023	Replace 1994 Boom Truck (pipe & valve lifter, transport carrier)	\$275,000			Water Fund
Water Plant	2023	Replace two heat pumps in filter building	\$35,000			Water Fund
Water Plant	2023	Replace one high service pump with a large one, plus valve	\$45,000			Water Fund
Water Plant	2023	Replace 2013 JD ATV	\$20,000			Water Fund
Water Plant	2023	Replace 1983 Aqua Ammonia 3,000 Gallon Tank w/Stainless Steel Tank	\$140,000			Water Fund
Water Plant	2023	Replace Gate Operator at Water Plant	\$20,000	new item		Water Fund
Water Plant	2024	Anthracite Replacement	\$15,000			Water Fund
Water Plant	2024	Mixers for Storage tanks	\$120,750			Water Fund
Water Plant	2024	Replace 1-30 year old pump and motor w/VFD	\$60,000	new item		Water Fund
Water Plant	2025	Gates for Lime Sludge Lagoons	\$35,000			Water Fund
Water Plant	2025	Replace 2-25 year old pumps	\$40,000			Water Fund
Water Distribution	2026	15 Yd Dump Truck (Split between Water and Wastewater Fund)	\$87,500			Water Fund
Water Plant	???	12th Avenue Water Tower upgrade and rehab	\$1,000,000	\$64,000	20	Water Fund -State loan
Water Plant	???	Standpipe & ozone operator valves	\$115,000	\$7,400	20	Water Fund -State loan
Water Plant	???	Backup Power Generator system for High Service Pump Station	\$900,000	\$58,000	20	Water Fund -State loan
Water Plant	???	Sludge Basin Plan Phase I	\$500,000	\$32,000	20	Water Fund -State loan
Water Plant	???	Sludge Basin Plan Phase II	\$500,000	\$32,000	20	Water Fund -State loan
Water Plant	???	Sludge Basin Plan Phase III	\$500,000	\$32,000	20	Water Fund -State loan
Water Plant	???	Presedimentation Basin Construction	\$2,110,000	\$135,000	20	Water Fund -State loan

<u>Department</u>	<u>Year</u>	<u>Description</u>	<u>Amount</u>	<u>Pmt per Year</u>	<u>Years to Bond</u>	<u>Funding Source</u>
Sewer Maintenance	2020	Lift Station #1 upgrade Design	\$500,000	State Loan	20	Waste Water Fund
Sewer Maintenance	2020	Lift Station #2 upgrade Design	\$500,000	State Loan	20	Waste Water Fund
Sewer Maintenance	2020	Lift Station #15 Design	\$100,000	State Loan	20	Waste Water Fund
Waste Water Plant	2020	Replace Roof on Old Operations Building	\$46,500			Waste Water Fund
Waste Water Plant	2020	Replace four primary effluent pumps	\$58,336			Waste Water Fund
Sewer Maintenance	2021	Sanitary Sewer along Americus Rd (US 50 to Rd 180, to serve Evergy property)	\$435,000	new item		Waste Water Fund
Sewer Maintenance	2021	Replace Lift Station #3	\$80,000			Waste Water Fund
Waste Water Plant	2021	Replace Roof on Effluent pump Bld.	\$70,000	new item		Waste Water Fund
Sewer Maintenance	2022	Replace 1/2 ton pickup	\$35,000			Waste Water Fund
Waste Water Plant	2022	Replace metal siding/roof on storage building	\$50,000			Waste Water Fund
Waste Water Plant	2022	Replace Dump Truck	\$100,000	new item		Waste Water Fund
Sewer Maintenance	2023	Sewer main relining	\$500,000			Waste Water Fund
Waste Water Plant	2023	Replace Perimeter Fencing	\$150,000			Waste Water Fund
Sewer Maintenance	2024	Lift Station #8 upgrade	\$500,000			Waste Water Fund
Sewer Maintenance	2024	Repair or replace force main from Lift Station 8	\$500,000			Waste Water Fund
Sewer Maintenance	2024	Sewer Main relining	\$500,000			Waste Water Fund
Waste Water Plant	2024	Replace John Deere Gator	\$15,000			Waste Water Fund
Waste Water Plant	2024	Replace 2000 3/4 ton picku with tommy lift	\$60,000	new item		Waste Water Fund
Sewer Maintenance	2025	Sewer Main relining	\$500,000			Waste Water Fund
Sewer Maintenance	2025	Replace 2011 Sewer Vactor Truck	\$450,000			Waste Water Fund
Sewer Maintenance	2025	Replace Lift Station #14	\$110,000			Waste Water Fund
Sewer Maintenance	2025	Add Fiber to LS #s 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15 to add SCADA monitoring	\$85,000	new item		Waste Water Fund
Waste Water Plant	2025	Replace Concrete at the Sludge Holding Area	\$100,000	new item		Waste Water Fund
Sewer Maintenance	2026	15 Yd Dump Truck (Split between Water and Wastewater Fund)	\$87,500	new item		Waste Water Fund
Sewer Maintenance	2026	Sewer Main relining	\$500,000			Waste Water Fund
Sewer Maintenance	2026	Replace LS #7	\$100,000	new item		Waste Water Fund
Sewer Maintenance	2026	Replace 11 ton Water Truck w/ 1.5 Ton Service Truck w/ AutoCrane	\$90,000	new item		Waste Water Fund

<u>Department</u>	<u>Year</u>	<u>Description</u>	<u>Amount</u>	<u>Pmt per Year</u>	<u>Years to Bond</u>	<u>Funding Source</u>
Collections	2020	Automated Refuse Truck Replacement	\$275,000			Solid Waste
Collections	2020	One Ton Heavy Duty, dual wheel, flat bed pickup w/cab guard & winch	\$40,000			Solid Waste
Recycling Center	2020	Rear-Load Recycling Truck and Packer Body Replacement 2010	\$195,000			Solid Waste
Transfer Station	2020	Rebuild Tipping Floor Load Area	\$35,000			Solid Waste
Collections	2021	Grapple Truck with Dump Bed	\$160,000			Solid Waste
Recycling Center	2021	Skid Mounted Litter Vacuum	\$23,500			Solid Waste
Transfer Station	2021	Wheel Loader w/Setco Solid tires/wheels	\$200,000			Solid Waste
Transfer Station	2021	Complete Equipment Storage Building	\$60,000			Solid Waste
Collections	2022	Roll-Off Truck Replacement	\$200,000			Solid Waste
Recycling Center	2022	1 ton pickup, dual wheels, regular cab- Replacement 2012	\$44,000			Solid Waste
Transfer Station	2022	Design & Preliminary Work For Revisions To The Tipping Box Area	\$65,000			Solid Waste
Transfer Station	2022	Tandem Axle Dump Truck Replacement	\$150,000			Solid Waste
Collections	2023	Automated Refuse Truck Replacement	\$299,000			Solid Waste
Recycling Center	2023	Side by Side Truckster	\$15,000			Solid Waste
Transfer Station	2023	Construction of Revisions To The Tipping Box Area	\$300,000			Solid Waste
Collections	2024	Roll-Off Truck Replacement	\$185,000			Solid Waste
Transfer Station	2024	Backhoe with Setco Tires and Blade	\$205,000			Solid Waste
Collections	2025	Automated side load truck	\$300,000			Solid Waste
Recycling Center	2025	Automated side load truck	\$300,000			Solid Waste
Transfer Station	2025	Rehab Sanitary landfill equipment storage building	\$75,000			Solid Waste

memo



TO: City Commission
CC: Mark McAnarney, City Manager
FROM: Christina Montgomery, City Attorney
DATE: June 18, 2020
SUBJECT: Legislative Updates

City Staff will give an overview on legislative updates from the 2020 Kansas Legislative Session that may be of interest or impactful to the City of Emporia. Enclosed is a summary of legislative updates compiled by the League of Kansas Municipalities.

2020 Legislative Update
Amanda L. Stanley,
General Counsel

**Relevant Bills for Local Government that Became Law - Summaries are from the
Kansas Legislative Research Department and the Revisor of Statutes Office**

HB 2642 - Unemployment

House Sub. for SB 27 amends provisions of the Employment Security Law, commonly referred to as unemployment insurance (UI), pertaining to unemployment benefits. Workers who started to file UI claims on or after January 1, 2020, are eligible for a maximum of 26 weeks of benefits. Under previous law, the number of weeks for which a worker may claim benefits was capped at 16 weeks, 20 weeks, or 26 weeks if the Kansas unemployment rate (on a three month seasonally adjusted average) was less than 4.5 percent, at least 4.5 percent but less than 6.0 percent, or at least 6.0 percent, respectively. Under current law, workers must wait for a week prior to making a claim and receiving UI benefits. The bill grants to workers an additional week's benefit upon the completion of the third week of unemployment after the waiting week. This amount does not increase the total amount of benefits that a worker may claim. The bill is effective upon publication in the Kansas Register and will sunset on April 1, 2021.

SB 102- Court Deadlines

Extension or Suspension of Deadlines and Videoconferencing by Order of the Chief Justice During State of Disaster Emergencies; House Sub. for SB 102 House Sub. for SB 102 creates and amends law related to orders by the Chief Justice of the Supreme Court (Chief Justice) regarding deadlines, time limitations, and two-way electronic audio-visual communication (videoconferencing), as follows. The bill creates provisions stating, notwithstanding any other provisions of law, during any state of disaster emergency declared pursuant to the statute providing for the same, the Chief Justice may issue an order to extend or suspend any statutory deadlines or time limitations, or authorize the use of videoconferencing in any court proceeding, when the Chief Justice determines such action is necessary to secure the health and safety of court users, staff, and judicial officers. The bill further provides that any order issued pursuant to these provisions may remain in effect for up to 150 days after a state of disaster emergency is terminated, and any order in violation of these provisions shall be void. These provisions will expire on March 31, 2021. The bill amends the speedy trial statute in the Kansas Code of Criminal Procedure to authorize the Chief Justice to issue an order to extend or suspend any deadlines or time limitations in the statute pursuant to the provisions outlined above. The bill requires, upon termination of such order, any trial scheduled during the time such order was in effect be placed back on the court schedule within 150 days. Similarly, the bill amends the statute in the Code of Civil Procedure governing computation of time to authorize the Chief Justice to issue an order to extend or suspend the computation rules or time limitations established in the statute pursuant to the provisions outlined above. The bill is effective upon publication in the Kansas Register

SB 155- Valley Center Cemetery

SB 155 deannexes all City of Valley Center territory within the Hillside Cemetery District, located in Sedgwick and Harvey counties, from the cemetery district, effective June 30, 2020. After July 1, 2020, any territory annexed by the City of Valley Center located within the Hillside Cemetery District will be excluded from the cemetery district upon annexation.

SB 173- Transportation Plan

House Sub. for SB 173 authorizes and directs the Secretary of Transportation (Secretary) to initiate a program to be called the Eisenhower Legacy Transportation Program (Program). The bill specifies the types of projects authorized, addresses local funding and new and continuing grant programs, authorizes alternative procurement methods under certain circumstances, increases city connecting links payments, adds reporting requirements, requires at least \$8 million to be spent in each county through fiscal year (FY) 2030, states 16.154 percent of sales tax shall be levied for the State Highway Fund (SHF), and makes additional changes to law.

Eisenhower Legacy Transportation Program (New Section 1)

The bill states the Program shall provide for the construction, improvement, reconstruction, and maintenance of the state highway system and provide for selection of projects that will allow for the flexibility to meet emerging and economic needs. The bill states program expenditures may include, but not be limited to, preservation, preservation plus, expansion and economic opportunity, and modernization projects, described below:

- Preservation projects. The bill requires the Secretary to establish targets for state highway system condition that reflect reasonable, realistic expectations and use reasonable, sound, and accepted methods to determine the annual preservation investment needed to achieve such state targets and long-term cost effectiveness. The bill states it is the intent of the Legislature that the Secretary spend from the SHF an amount equal to or exceeding ten times the determined average annual preservation investment prior to completion of the program. The bill requires the Secretary to manage cash-flow and project lettings to provide reasonable assurance that preservation will be fully funded each year. For this purpose, the bill specifies "preservation projects" refers to maintenance, repairs, or replacement of existing infrastructure. The bill authorizes federal funding from grants or stimulus to be used for preservation projects;
- Preservation plus projects. The bill authorizes safety or technology elements to be added in a preservation plus project. The bill states such elements may include, but not be limited to, adding paved shoulders, passing lanes, traffic signals, or intelligent transportation system elements or laying broadband fiber or the conduit for broadband fiber. The bill states it is the intent of the Legislature that the Secretary has the authority to enhance preservation plus projects by adding safety or technology improvements, or both. The bill authorizes federal funding from grants or stimulus to be used for preservation plus projects;
- Expansion and economic opportunity projects. The bill authorizes expansion and economic opportunity projects, or projects that improve access, relieve congestion, and enhance economic development opportunities, to be selected using criteria determined by the Kansas Department of Transportation (KDOT) that include, but are not limited to,

engineering and traffic data, local consultation, geographic distribution, and an economic impact analysis evaluation; and

- Modernization projects. The bill authorizes modernization projects to improve safety, condition, or service of the highway system (e.g., widening lanes or shoulders and building rail grade separations). Those projects are to be selected using KDOT criteria to include, but not be limited to, engineering data, local consultation, and geographic distribution.

The bill requires KDOT to develop criteria for the incorporation of practical improvements into project designs.

Previously Selected Projects

The bill requires the Program to provide for the completion of modernization and expansion projects selected for construction under the Transportation Works for Kansas Program (T-Works) [KSA 68-2314b] and that those projects be let prior to July 1, 2023. The bill requires the Secretary to let to construction contract at least one phase of each remaining T-Works project before any modernization or expansion project, or both, under the Program is let to construction. The bill allows completing a reconstruction of an interchange at I-135 and 36th Street in Harvey County to be optional. If that project is not constructed, the bill requires the estimated construction costs for that project to be used on other construction projects in KDOT's south central district.

Local Programs

The bill requires the Program to provide for assistance, including credit and credit enhancements, to cities and counties in meeting their responsibilities for transportation improvements. The bill states such programs may use criteria developed by KDOT for the incorporation of practical improvements into project designs. The bill authorizes expenditures for purposes including, but not limited to, the following:

- Apportionment of the Special City and County Highway Fund to assist with city and county responsibilities for roads and bridges not on the state highway system;
- Sharing federal aid with cities and counties to assist with their responsibilities for roads and bridges not on the state highway system;
- Programs to assist cities with city connecting links and local partnership programs to resurface or geometrically improve city connecting links or to promote economic development;
- Programs similar to KDOT's local bridge improvement program, to replace or repair bridges not on the state highway system;
- Programs to assist cities and counties with railroad crossings of roads not on the state highway system; or
- Programs that allow local governments to exchange federal aid funds for state funds.

Transportation Other than Construction of Roads and Bridges

The bill requires the Program to provide for the following types of programs in accordance with new or continuing law:

- A railroad program for the preservation and revitalization of rail service in the state;

- An aviation program to provide assistance for planning, constructing, reconstructing, or rehabilitating the facilities of public use general aviation airports;
- Public transit programs to aid elderly persons, persons with disabilities, and the general public;
- A transportation technology program to provide for multimodal transportation related projects that support innovative technology; and
- A multimodal program to provide improvement assistance for bike facilities, pedestrian facilities, or other transportation-sensitive economic opportunities on a local or a regional basis.

Project Delivery

The bill states the program shall allow the Secretary to award certain state highway system projects using delivery procurement methods other than design-bid-build. **[Note:** Alternative project delivery is further discussed in Section 4.]

Broadband

The bill states the Program shall provide for a broadband infrastructure construction program. **[Note:** Broadband construction is further discussed in Section 3.]

Uses of Certain Revenues

The bill requires SHF revenues, which include motor fuel taxes, vehicle registration fees, sales and compensating use taxes, and eligible federal aid, to be used in the following order of priority:

- To pay bond obligations;
- To pay for agency operations;
- To make city connecting link payments;
- To pay for needed preservation projects; and
- Pursuant to other purposes and authority given to the Secretary.

The bill requires new bonds issued for the purposes of the Program to be paid using all SHF revenues, including sales or compensating use tax revenues.

Project Selection

The bill requires the Secretary to determine the projects to be selected, using KDOT selection methods and criteria. The bill states consideration may be given to additional criteria that could include projects that remove transportation infrastructure from the state highway system, identify priority corridors, include local monetary participation, or reduce project size.

The bill states legislative intent for the Secretary to develop a metric-driven process that determines a reasonable and fair minimum amount of SHF moneys to be spent on new modernization and expansion projects in each KDOT district over the duration of the Program. The bill requires the process for determining the minimum amount for each district to be subject to the following limits:

- The minimum amount for each district added together must total at least 50 percent of the estimated cost of constructing all modernization and expansion projects let to contract in the Program;

- If the estimated cost of constructing all Program modernization and expansion projects increases or decreases by more than 10 percent, the minimum amount must be adjusted;
- At least 40 percent of the minimum amount or adjusted minimum amount for each district must be let to construction contract by the end of year 5 of the Program and 100 percent of the minimum amount by year 10; and
- T-Works projects are not to be considered when determining the minimum amounts.

The bill requires the Secretary to select projects for development every two years, but does not require the Secretary to construct every project selected for development.

The bill requires project selection after consultation with local jurisdictions. The bill states it is the intent of the Legislature that the Secretary take the actions necessary to have transportation improvement projects ready to let to construction as cash-flow management allows.

Long-range Planning

The bill requires the Secretary to develop a long-range transportation plan before June 30, 2030, to include recommendations for a new transportation program for the state. The bill requires the plan to examine, but not be limited to, project selection criteria and selection methods used in the Program, transportation funding sources, and Program project categories. The bill states the plan shall be developed after consultation with the Governor and state and local elected officials.

Innovative Technologies Grants (New Section 2)

The bill authorizes the Secretary to participate in or make grants for projects to plan, assess, and field new capabilities and innovative technologies for modes of transportation including, but not limited to, aviation and highway transportation. The bill states the new capabilities should represent increased efficiency for state operations, public cost savings, increased safety, or economic development.

The bill establishes the Transportation Technology Development Fund, which the bill requires to be used to provide assistance with the planning, assessment, and fielding of new capabilities for all modes of transportation including, but not limited to, aviation and highway transportation. Expenditures from this fund are to be made in accordance with the provisions of appropriations acts. The bill states grants made by the Secretary from this fund will be upon such terms and conditions as the Secretary deems appropriate.

The bill requires the Director of Accounts and Reports to transfer \$2.0 million from the SHF to the Transportation Technology Development Fund on July 1, 2020, and each July 1 thereafter, through July 1, 2030. The Secretary is authorized to transfer additional moneys between the Transportation Technology Development Fund and the SHF.

Broadband Grants (New Section 3)

The bill authorizes the Secretary, working jointly with the Office of Broadband Development within the Department of Commerce, to make grants for construction projects that expand and improve broadband service in Kansas. The bill requires grants made by the Secretary to reimburse grant recipients for up to 50 percent of actual construction costs in expanding and improving broadband service. Such grant reimbursements will be upon the terms and conditions the Secretary deems appropriate, in coordination with the Secretary of Commerce.

The bill establishes the Broadband Infrastructure Construction Grant Fund, to be used to provide grants for the expansion of broadband service in Kansas. Expenditures from this fund will be made in accordance with the provisions of appropriations acts. The bill requires the Director of Accounts and Reports to transfer \$5.0 million from the SHF to the Broadband Infrastructure Construction Grant Fund on July 1, 2020, 2021, and 2022. On July 1, 2023, and each July 1 thereafter, through July 1, 2030, the bill requires the transfer to be \$10.0 million. The bill authorizes the Secretary to notify the Director of Accounts and Reports to transfer all remaining and unencumbered funds from the Broadband Infrastructure Construction Grant Fund to the SHF at the end of each fiscal year.

Alternative Procurement (New Section 4)

The bill authorizes the Secretary to use procurement methods other than a design-bid build contract to the lowest bidder if certain requirements are met:

- Projects selected for alternative delivery shall not include preservation projects;
- Three projects utilizing toll revenues for construction and maintenance, one every three years, are authorized;
- Not more than 3 percent of moneys spent in the Program can be used on alternative delivery;
- The bill requires an additional 2 percent to be available for alternative delivery starting in FY 2023;
- The bill excludes the dollar values of the three projects utilizing toll revenues and projects obtained through federal grants or stimulus when determining these limits;
- The project must cost at least \$100 million; and
- A contract or contracts for alternative delivery projects can include, but will not be limited to, services for preconstruction, design, construction, construction management, maintenance, operation, financing, or a combination thereof.

The bill requires KDOT to develop and utilize criteria for selecting whether alternative delivery or design-bid-build procurement is in the best interest of the state. The bill requires the selection criteria to include, but not be limited to, the need for an accelerated schedule, safety needs, project complexity, opportunity for innovation, and economic development. The bill prohibits any project to be selected for alternative delivery without having been evaluated under the KDOT selection criteria.

The bill requires KDOT to develop and utilize procedures for advertising, receiving, and evaluating proposals; awarding contracts; and administering contracts in its alternative delivery procurement program. The bill specifies procurement procedures in continuing law (on topics including notification, letting to the lowest responsible bidder, negotiations with the contracting firm, and project descriptions) will not apply to alternative delivery projects.

The bill requires the alternative delivery procedures to include the following:

- A two-phase best value competitive selection or contracting process, including a first-phase short list of no more than four proposers identified using a request for qualifications and a second phase of submission of price, technical proposals, or both in response to a request for proposals;
- Advertisement of requests for qualifications in the Kansas Register for at least three consecutive weeks;

- Prequalification of contractors by the Secretary in accordance with statutes, regulations, and KDOT procedures governing prequalification and licensing;
- A bond for performance and payment or alternative security guaranteeing contract performance and payment obligations for supplies, materials, and labor; and
- A requirement that firms and key personnel identified in the qualifications phase and scored to determine the short list may not be replaced during the project without KDOT's written approval.

The bill states a contracting entity selected for an alternative delivery project will not be in violation of laws governing technical professions and the contract shall not be void if such contractor obtains professional services by subcontracting with an entity or entities licensed or holding a certificate of authorization to perform professional services in accordance with laws governing technical professions.

The bill states a contracting entity selected for an alternative delivery project that is responsible for preparing or furnishing design plans and specifications, through its own organization or by subcontracting, will be liable for damages arising from design defects in the plans and specifications that result in injury to persons or damage to property occurring after completion of the contract and KDOT acceptance of the project. The bill states that would be the case if and to the extent such injury or damage arises from a failure to exercise the degree of learning and skill ordinarily possessed by a reputable contractor or by a technical professional practicing in Kansas in the same or similar locality and under similar circumstances.

Short Line Rail Improvement Fund (New Section 5)

The bill establishes the Short Line Rail Improvement Fund (SLRI Fund) to be administered by the Secretary. The SLRI Fund will be subject to appropriations acts and expenditures will require the written approval of the Secretary. The bill requires expenditures from the SLRI Fund to be made for a qualified railroad track maintenance expenditure constructed by an eligible entity and to be matched on a basis of 70 percent state moneys to 30 percent eligible entity moneys.

The bill requires transfer of \$5.0 million from the SHF to the SLRI Fund on July 1, 2020, 2021, and 2022.

The bill defines an "eligible entity" as a class II or class III railroad as defined in federal regulations in effect as of January 1, 2020, or any owner or lessee industry track located on or adjacent to a class II or class III railroad in Kansas. The bill defines "qualified railroad track maintenance expenditure" as gross expenditures for maintenance, reconstruction, or replacement of railroad track and related structures in Kansas, if the track was owned or leased by an eligible entity as of January 1, 2020.

Driver's Education Scholarship Grant Program (New Section 6)

The bill directs the Secretary to develop a driver's education scholarship grant program to assist qualified individuals in becoming safe drivers. The bill allows any entity that desires to provide a driver's education program to submit an application for a competitive grant for an amount to be determined by the Secretary for the purpose of paying the costs of scholarships to attend driver's education. Amounts available will be subject to appropriations. The bill limits a scholarship for a qualified individual to not more than \$200, to be awarded upon completion of the driver's

education program. The bill authorizes the Secretary to adopt rules and regulations to establish criteria and for other matters necessary for this program.

The bill defines a qualified individual for this purpose as a resident of Kansas younger than age 30 whose household income is positive and not more than 200 percent of the most recent federal poverty level published by the U.S. Department of Health and Human Services for the tax year prior to the year in which the application is submitted.

The bill requires the Secretary to provide a report on this program to the House Committees on Appropriations and Transportation and the Senate Committees on Ways and Means and Transportation on or before January 9, 2023.

The provisions related to the driver's education scholarship grant program will expire June 30, 2023.

City Connecting Links (Section 7)

The bill increases from \$3,000 to \$5,000 per year per lane per mile the amount the Secretary is required to annually distribute to cities for the maintenance of streets and highways in cities the Secretary has designated as city connecting links. Continuing law authorizes the Secretary to maintain such streets and pay for that maintenance from the SHF with the consent of the city governing body.

The bill authorizes the remainder of the SHF to be spent for any purpose specified in Section 1.

KDOT Annual Report (Section 8)

The bill adds requirements for the written report required under continuing law to be provided to the Governor and each member of the Legislature by the tenth day of the Legislative Session, to require the report:

- Be posted on the KDOT official website and require KDOT to notify all persons or entities who have requested notification of the posting;
- Include annual expenditures from and more detailed information about:
 - Anticipated annual payouts of construction projects already under contract and any proposed construction projects for the next three fiscal years, listing preservation projects separately from modernization and expansion projects;
 - Proposed construction projects to be let to contract in the current fiscal year and anticipated annual payouts for the next three fiscal years for those projects;
 - Anticipated expenditures for the next three fiscal years on remaining agency debt service, programs, and operations; and
 - Include a comparison of annual revenue expected into the SHF, including ending balance carryovers, for the next three fiscal years;
- For any Program construction project that is more than \$5 million, an explanation of all initial bids submitted and the actual final cost of construction for that project;
- Include all revenue available for the SHF, including, but not limited to, the SHF balance from the previous year, motor fuel taxes, registration fees, sales and compensating use taxes, and bond proceeds;

- Include all committed expenditures identified by program (e.g., debt service payments, agency operations, aviation, project development costs) and construction payouts by program category (i.e., preservation, modernization, and expansion);
- Include a report of projects that have been let but not paid out and how those projects have been identified to achieve state highway system condition targets; and
- Include a detailed explanation of the methods or criteria used in selecting projects under Program highway or local programs, including an explanation of the amounts expended and projects selected for construction or development and when and where the next local consults are to take place.

For the report due in 2021, the bill requires the report to include a detailed explanation of the methods or criteria used in selecting projects under T-Works and in the awarding of assistance to cities, counties, or other transportation providers and specific recommendations for any statutory changes necessary to successfully complete T-Works or for efficient and effective operation of KDOT.

The bill adds the Transportation Technology Development Fund and the Broadband Infrastructure Construction Grant Fund created by the bill to the funds about which allocation and expenditure information is required in the annual report. The bill requires information about grants under those new funds and on funding shifts between the SHF and the Coordinated Public Transportation Assistance Fund, the Rail Service Improvement Fund, the Public Use General Aviation Airport Development Fund, the Transportation Technology Development Fund, and the Broadband Infrastructure Construction Grant Fund. The bill requires the annual report to include information concerning the condition and performance of the state highway system.

“\$8 Million Promise” (Section 9)

The bill requires the Secretary to expend or commit to expend at least \$8 million in each county from the revenue provided under the provisions of the Program from July 1, 2020, through June 30, 2030.

Changes to Fund Transfers and Balances (Sections 10, 11, and 12)

The bill authorizes the Secretary to transfer moneys in addition to the \$11.0 million required each year from the SHF to the Coordinated Public Transportation Assistance Fund. The bill also authorizes the Secretary to transfer moneys from the Coordinated Public Transportation Assistance Fund to the SHF. The bill requires the amount remaining in the fund and the amount spent or dedicated for grants or projects for public transportation in each fiscal year to be not less than \$11 million.

The bill requires the amount remaining in the Rail Service Improvement Fund and the amount spent or dedicated for loans or grants in each fiscal year to be not less than \$5 million. Under continuing law, \$5.0 million is to be transferred each July 1 from the SHF to the Rail Service Improvement Fund.

The bill authorizes the Secretary to transfer moneys in addition to the \$5.0 million required each year from the SHF to the Public Use General Aviation Airport Development Fund. The bill also authorizes the Secretary to transfer moneys from the Public Use General Aviation Airport

Development Fund to the SHF. The bill requires the amount remaining in the fund and the amount spent or dedicated for grants in each fiscal year to be not less than \$5 million.

Retailer's Sales and Compensating Use Taxes (Sections 13 and 14)

The bill amends law to state, starting July 1, 2021, 16.154 percent of the 6.5 percent retailer's sales tax and the same percentage of the compensating use tax shall be levied for the SHF and such tax moneys are to be deposited into the SHF for SHF purposes and for city connecting links.

HB 2595- Surplus Property

HB 2595 removes the 30-day waiting period before offering surplus property for sale to the general public. Current law allows the Secretary of Administration, through the Kansas Surplus Property Program, to sell state surplus property to the general public only after the property has been offered to qualified individuals and entities for at least 30 days.

HB 2137 – KORA Bill

Senate Sub for HB 2137 would amend the Scrap Metal Theft Reduction Act to remove the requirement that scrap metal dealers photograph the vehicle in which a junk vehicle or other regulated scrap metal property is delivered.

The bill also would continue in existence the following exceptions to the Kansas Open Records Act (KORA):

- KSA 38-2310(c), concerning law enforcement records identifying victims of certain crimes;
- KSA 45-221(a)(52), concerning public records identifying the home address of certain officials;
- KSA 59-29a22(b)(10), concerning treatment records in the possession of a treatment facility;
- KSA 9-1810(b), concerning the Kansas Bank Commissioner's informal agreements with banks or trust companies;
- KSA 40-409(j)(2), concerning records related to certain insurance policy valuations;
- KSA 40-6007(a), concerning documents related to insurer's own risk and solvency assessments;
- KSA 50-6a11(f), concerning tobacco sales data related to the Master Settlement Agreement;
- KSA 65-6741, concerning court records related to unlawful abortions;
- KSA 40-223j(c), concerning insurance actuarial reports used for counseling and discipline; and
- KSA 46-1129, concerning survey responses to audits conducted under the Legislative Post Audit Act.

HB 2034—Restitution

Senate Sub for HB 2034 would amend law related to court orders for restitution by criminal defendants, as follows.

Under current law, a court is required to order restitution unless the court finds compelling circumstances that would render a plan of restitution unworkable. The bill would amend this provision to require a court to order restitution and to specify that ordered restitution shall be due immediately, unless the court orders that the defendant be given a specified time to pay or be allowed to pay in specified installments, or the court finds compelling circumstances that would render restitution unworkable, either in whole or in part. Current provisions requiring the court to

state reasons for unworkability on the record and requiring the court to initiate collection proceedings if the defendant is in noncompliance with the restitution order after 60 days would be amended to reflect the above amendments. The collection provisions also would be amended to ensure consistency in statutory phrasing and reflect enacted changes to related statutes.

A provision would be added to allow a defendant subject to a restitution order entered prior to the effective date of the bill to file a motion prior to December 31, 2020, proposing payment of restitution in specified installments, if the order does not give the defendant a specified time to pay or set payment in specified installments. The court could recall the restitution order from the assigned agent until the court rules on the motion. If the court does not order payment in specified installments, or if the defendant does not file a motion by the above date, the restitution would be due immediately.

The bill would specify the above amendments are procedural in nature and shall be construed and applied retroactively.

The bill would amend the statute governing conditions of probation or suspended sentence to direct that reparation or restitution in such cases be made in accordance with the procedure amended by the bill.

The bill would be in effect upon publication in the Kansas Register.

S Sub for HB 2018—The Cable Bill

Senate Sub for HB 2018 would amend the Kansas Video Competition Act (Act) to prohibit municipalities from imposing additional requirements for the deployment of micro wireless facilities in the public right-of-way and to allow a municipality to require compliance with certain standards.

Definitions

The bill would add the following definitions to the Act:

- “Communications service” would mean information service or telecommunications service as defined in 47 U.S.C § 153; and
- “Micro wireless facility” would mean equipment at a fixed location that is:
 - Installed on cables that are owned and operated by a video service provider between utility poles, as defined in KSA 66-2019;
 - Used to provide communications services; and
 - Not larger in dimensions than 24 inches in length, 15 inches in width, and 12 inches in height, and does not have any associated exterior antenna longer than 11½ inches.

The definition of the term “video service” would be amended to specify the term would not include any video programming provided by a commercial mobile service provider, as defined in 47 U.S.C § 332(d), unless such programming is determined by the Federal Communications Commission to be cable service.

Changes to Prohibited Activities Under the Act

The bill would clarify what activities a municipality, defined as a city or county under the Act, would be prohibited from engaging in regarding the holder of a state-issued video service authorization, and add the following prohibitions:

- Impose any fee, tax, or charge other than any applicable federal and state taxes or the Video Service Provider Fee found in KSA 2019 Supp. 12- 2024 [Note: The bill would remove similar language in law that addresses gross tax receipts and fees associated with the Act.];
- Require the holder of a state-issued video service authorization to obtain any additional authorization or license for the provision of communications service over a holder's network; and
- Require a video service provider to make an application or pay any fee, license, tax, or rent for the installation, placement, maintenance, operation, or replacement of a micro wireless facility.

Compliance with Certain Standards for Deployment

The bill would authorize a municipality to require the holder of a state-issued video service authorization to comply with the National Electrical Safety Code and all industry-recognized engineering safety standards.

Clarifications

The bill would clarify nothing in the Act would prohibit a municipality from assessing the Video Service Provider Fee or rates or enforcing any regulations pursuant to law relating to wireless infrastructure siting found in KSA 66-2019.

The bill would also clarify nothing in the bill would be construed to prohibit a cooperative or the owner of a utility pole from setting rates, fees, terms, and conditions of any pole attachment agreement with an authorized video service provider.

The bill would amend a provision in the Act governing the requirements of an application for a state-issued video service authorization to add taxes to the list of items with which an applicant must comply.

HB 2585--Utilities

Senate Sub for HB 2585 would create and amend law relating to a tax exemption for and the tracking and collection of state and federal income tax by certain public utilities and would create law related to the authority of the Kansas Corporation Commission (KCC) to regulate electric public utility rates to allow contract and discounted rates for certain facilities, as specified below. The KCC would be authorized to approve such rates notwithstanding provisions governing its power to require utilities to establish just and reasonable rates to maintain efficient and sufficient electric service and to prohibit variations from established rate schedules.

The bill also would make technical changes.

Income Tax Exemption

The bill would exempt the following utilities from Kansas income tax:

- Any utility that is a cooperative, as defined in law, or owned by one or more cooperatives; and
- For tax years ending on or after January 1, 2021, every electric and natural gas public utility, as defined in law, that is subject to rate regulation by the KCC.

The bill would prohibit electric and natural gas public utilities subject to rate regulation, not including cooperatives or utilities owned by one or more cooperatives, from being included in a consolidated or unitary combined return, or to collect income tax as a component of retail rates.

Tracking Changes to Income Tax Collection

The bill would require a public utility, as defined in KSA 66-104, that includes expenses related to income taxes as a component of its retail rates to track and defer into a regulatory asset or liability, as appropriate, an over collection or under collection of income tax expenses if the income tax rates assessed on a utility are adjusted as a result of any changes in state or federal law.

Application for New Rates

The bill would require a utility to file an application for new retail rates reflecting adjusted income tax rates with the KCC within 60 days of enactment of such a change in state or federal law if the adjustment results in an over collection or under collection of income tax expenses that is equal to or exceeds 0.25 percent of a utility's KCC approved base revenue level from the utility's most recent rate proceeding. The utility would then be required to refund or collect the tracked amounts from their retail customers in a manner approved by the KCC.

KCC Order

The KCC would be required to issue an order addressing an application for adjusted retail rates due to a change in income tax expenses within 120 days. The bill would require the order to:

- If requested by the utility, give due consideration to the common interests of the utility and its customers, including, but not limited to:
 - The use of a two-year implementation of current period rate changes to maintain the credit quality of the utility by ensuring that any such change in rates would not cause the utility's credit metrics that are traditionally considered by credit rating agencies to deteriorate to a level that could impair the utility's current credit rating.

If a retail rate change to address adjusted income tax expense is implemented over a period of time, the utility would be required to track and defer any over collection or under collection of income tax expenses as a regulatory liability or asset, as appropriate, that would accrue interest at the utility's weighted cost of capital, as determined by the KCC in the utility's most recent general rate proceeding, and refund or collect the balance in the next full general rate proceeding.

In the event a utility has a full general rate case pending or has notified the KCC of its intention to file such an application, at the time any adjusted income tax rates become effective, the bill would allow the KCC to issue an order finding that such adjusted income tax rates should not be reflected in retail rates until a utility's new retail rates become effective following its general rate proceeding. The bill would require the utility to demonstrate the public interest would be promoted by excluding adjusted income tax rates from its retail rates.

Full Rate Proceeding Clarification

The bill would make clear that a filing resulting from adjusted income tax rates could not require the utility to file a full general rate case or require the utility to update any component of retail rates other than the income tax expense component. The bill would provide that rate updates resulting from changes in income tax expenses would not be considered a violation of any existing rate moratorium agreement.

Excess Accumulated Deferred Income Tax Balances

The bill would require excess accumulated deferred income tax balances resulting from income taxes adjusted due to changes in state or federal law remain unamortized on the utility's books of account until new retail rates from its next full general rate proceeding after the adjusted income

tax rates take effect, at which time such balances would be required to be amortized and reflected in retail rates.

If requested by the utility, excess accumulated deferred income tax balances resulting from changes in state law effective January 2021 would be amortized into retail rates over a period of not less than 30 years by order of the KCC.

Excess accumulated deferred income tax balances resulting from any other changes in state or federal law would be amortized into retail rates by order of the KCC in a manner consistent with requirements of state and federal tax law and relevant regulations and in a manner that will not impair the utility's credit rating.

Municipal and Cooperative Utilities

The bill would clarify that provisions related to adjustments for state or federal income tax expenses would not apply to municipal electric or natural gas utilities or to a cooperative.

Definitions

The bill would define "over collection or under collection of income tax expense" as the portion of utility revenue representing the difference between the cost of service as approved by the KCC in the utility's most recent base rate proceeding and the cost of service that would have resulted had the provision for state or federal income taxes been based upon the adjusted corporate income tax rate. The bill would specify that "over collection or under collection of income tax expense" would not include the effects of accumulated deferred income taxes or excess accumulated deferred income taxes.

Contract Rates Not Based on Cost of Service to Facility

The bill would allow the KCC to approve a contract rate, outside a general rate proceeding, that is not based on the electric public utility's cost of service for a facility, if the KCC:

- Determines such facility would not continue operations, or continue operations that had previously been suspended within the state, and the rate is in the interest of the state based on:
 - The interests of the customers of the utility serving the facility;
 - An evaluation of the incremental cost to serve the facility;
 - The interests of the citizens of the state generally in promoting economic development, retaining the tax base, keeping employment opportunities in the state, and other benefits created by approval of the contract rate, as determined by the KCC; and
- Allocates the reduced revenues from the contract rate (as determined by a comparison of the contract rate to the revenues that would have been generated at the retail rate the facility would have paid without such contract rate) to the utility's other non-contract customers through a uniform percentage adjustment. The bill would require the reduced revenues to be applied in the base rates of all customer classes, except the base rates for service provided to customers under any approved contract rate, in each general rate proceeding involving the utility serving the facility.

Contract Rates Based on Incremental Cost of Service to a Facility

The bill would allow the KCC to approve a contract rate, outside a general rate proceeding, that is based on the utility's incremental cost of service for a facility, if the KCC:

- Determines the facility would not commence or expand operations in the state without a contract rate;
- Determines the contract rate recovers the incremental cost of providing service to the facility and is in the best interest of the state based on:
 - The interests of the customers of the utility serving the facility;
 - The incremental cost of serving the facility; and
 - The interests of the citizens of the state generally in promoting economic development, expanding the tax base, increasing employment in the state, and other benefits created by approval of the contract rate, as determined by the KCC; and
- Uses the reduction in revenues that result from any contract rate approved by the KCC pursuant to the bill during the rate's effective period for the purposes of determining the utility's revenue requirement in each general rate proceeding concluding after July 1, 2020.

Terms and Renewal

The bill would specify the KCC could approve each type of contract rate for a term of up to ten years, with the ability to renew such rates, upon the utility's application for reapproval. The KCC would not have the authority to modify or eliminate any approved contract rate during the specified term.

Effect on Prior Contract Rates

The provisions of the bill would not affect, or establish standards for approval of, any contract rates approved by the KCC prior to and in effect on July 1, 2020, and would not affect or diminish the KCC's general ratemaking authority to approve just and reasonable contract rates prior to July 1, 2020.

Discounted Rates

The bill would authorize the KCC to approve the implementation of economic development rate schedules providing discounts from standard rates for electric service for new or expanded facilities of industrial or commercial customers that are not in the business of selling or providing goods or services directly to the general public.

Eligibility

To be eligible for discounted rates, the industrial or commercial customer would be required to:

- Have incentives from one or more local, regional, state, or federal economic development agencies to locate new or expanded facilities in the utility's certified service territory;
- Qualify for service under the utility's nonresidential and non-lighting rate schedules for a new or expanded facility; and
- Not receive the discount together with service provided by the utility pursuant to any other special contract agreements.

Applicability

The discount authorized by the bill would be applicable only to new facilities or expanded facilities that meet the following requirements:

- A peak demand that is reasonably projected to be at least 200 kilowatts within two years of the date the customer first receives service under the discounted rate and is not the result of shifting existing demand from other facilities of the customer in a utility's certified service territory; and

- Has an annual load factor that is projected to equal or exceed the electric public utility's annual system load factor within two years of the date the customer first receives service under the discounted rate; or
- Otherwise warrants a discounted rate based on any of the following factors:
 1. The number of new permanent full-time jobs created or the percentage increase in existing permanent full-time jobs created;
 2. The level of capital investment;
 3. Additional off-peak usage;
 4. Curtailable or interruptible load;
 5. New industry or technology; or
 6. Competition with existing industrial customers; or
- A peak demand that is reasonably projected to be at least 300 kilowatts within two years of the date the customer first receives service under the discounted rate and is not the result of shifting existing demand from other facilities of the customer in the utility's certified service territory; and
- An annual load factor that is reasonably projected to be at least 55 percent of the utility's annual system load factor within two years of the date the customer first receives service under the discounted rate; and
- The facility maintains the peak demand and load factor for the remaining duration of the discounted rate.

Calculation of Discount

The discount authorized by the bill would be determined by reducing otherwise applicable charges associated with the rate schedule that applies to the new or expanded existing facility by a fixed percentage for each year of service under the discount for a period of up to five years.

The average of the annual discount percentages could not exceed 20 percent for discounts for facilities that have a projected peak demand of at least 200 kilowatts, but could be between 5 percent to 30 percent in any year. For facilities that have a projected peak demand of at least 300 kilowatts, the average of the annual discount percentages could not exceed 40 percent, but could be between 20 percent to 50 percent in any year.

In each general rate proceeding concluded after July 1, 2020, the KCC would be required to allocate the reduced level of revenues arising from the discounted rates provided by the bill through the application of a uniform percentage adjustment to the revenue requirement responsibility for all customer classes of the utility providing the discounted rate, including the classes with customers that qualify for discounts under the bill, except for contract rates either approved by the KCC pursuant to the bill or its general ratemaking authority.

Tracking Mechanisms and Deferred Regulatory Assets

For both contract rates and discounted rates, the KCC would be required to approve a mechanism to track the utility's reductions in revenue as a result of the contract rate or discounted rate from the date the rate becomes effective. The bill would require such reductions in revenue to be deferred to a regulatory asset and would accrue interest at the weighted average cost of capital used by the KCC to set the utility's rates in its most recent general rate proceeding. The balance of the regulatory asset would be included in the rate base and revenue requirement of the utility in each of its general rate proceedings through an amortization of the balance over a reasonable period until fully collected from the utility's non-contract rate customers.

General Applicability

The bill would clarify provisions related to discounted rates would not apply to those related to contract rates approved by the KCC pursuant to the bill or the KCC's general ratemaking authority in place prior to July 1, 2020.

Definitions

The bill would define various terms used in the bill:

- "Electric public utility" would have the same meaning as used elsewhere in Chapter 66 of the Kansas Statutes Annotated, but would not include any utility that is a cooperative or is owned by one or more such cooperatives;
- "Facility" would mean an existing or proposed building or buildings of an existing or potential electric customer with existing or expected load equal to, or in excess of, a monthly demand of 50 megawatts, and the load may represent the aggregate demand of multiple meter accounts;
- "Expanded facility" would mean a separately metered facility of the customer, unless the utility determines the additional costs of separate metering of a facility would exceed the associated benefits or that it would be difficult or impractical to install or read the meter, that has not received service in the electric utility's certified service territory in the previous 12 months; and
- "New facility" would mean a building of the customer that has not received electric service in the electric utility's certified service territory in the previous 12 months.

Status Reports

The bill would require the KCC to provide a status report to the Legislature biennially, starting in January 2023, regarding utilities' use of contract rates and discounted rates, with the following items to be included:

- Number of entities with such contract or discounted rates;
- Number of entities with increased load;
- Number of entities with decreased load;
- Aggregate load and change in aggregate load on an annual basis;
- Total subsidy and the subsidy for each individual contract;
- Annual and cumulative rate increase on noncontract rate customers; and
- Estimated economic development impact of entities with contract rates or discounted rates that occurred as a result of such contract rates through an evaluation of the entities' annual total employment, change in employment, and tax revenue generated.

Bills Vetoed by the Governor as of 5/29/20

HB 2054 COVID-19 Response Bill

Senate Sub. for HB 2054 would have created and amended law and made appropriations regarding the governmental response to the 2020 COVID-19 pandemic in Kansas. It sets up oversight for CARES Funding, modified the Emergency Management Act, created business liability protections, and codified several executive orders.

HB 2702 – Property Tax

HB 2702, as amended, would establish new notice and public hearing requirements for certain taxing subdivisions, prohibit certain real property valuation increases, and provide a one-time delay in the deadline for payment of property taxes, enact the Taxpayer Protection Act, extend certain income and privilege tax filing and payment deadlines, authorize county treasurers to establish partial payments and establish payment plans for all property taxes, and provide for county discretion in handling delinquent property tax penalty charges.

The bill would be in effect upon publication in the Kansas Register.

Notice and Public Hearing Requirements

The bill would establish, beginning in 2021, new notice and public hearing requirements for certain taxing subdivisions prior to property tax increases above a revenue-neutral rate. The bill would not apply to school districts or to any taxing subdivisions receiving less than \$5,000 annually in property taxes.

On or before June 15 of each year, beginning in 2021, the bill would require county clerks to submit the revenue-neutral rate to all other taxing subdivisions at the same time estimated assessed valuation information is provided. "Revenue-neutral rate" would be defined to mean the tax rate for the current tax year that would generate the same property tax revenue as levied the previous tax year using the current tax year's total assessed valuation. The bill would require the Director of Accounts and Reports to modify budget information forms to show the revenue-neutral rate.

The taxing subdivisions affected by the bill would be prohibited from levying rates that exceed the revenue-neutral rates unless the taxing subdivisions have published notice on their websites of the proposed intent to exceed such rates and announcing a public hearing on such action. On or before July 15, the bill would also require governing bodies to notify county clerks of their intent to exceed revenue-neutral rates. County clerks subsequently would be required to notify each taxpayer with property in taxing subdivisions seeking to exceed such rates of the public hearings at least 10 days in advance of the hearings. The bill would require county clerks to send consolidated notifications for all taxing subdivisions relevant to a parcel of property via mail unless taxpayers and county clerks both have consented to service by electronic means. The bill would require all costs associated with notification requirements to be borne by taxing subdivisions seeking to exceed their revenue-neutral rates, with payment for such costs due to county clerks by December 31.

The bill would require, at public hearings required to be held on or before September 10, governing bodies to provide interested taxpayers an opportunity to present oral testimony within reasonable time limits and without unreasonable restriction on the number of individuals allowed to make public comment. At the conclusion of the public hearings, the bill would require a majority vote of governing bodies adopting resolutions or ordinances that approve exceeding the revenue-neutral rates, prior to adoption of proposed budgets resulting in a tax rate that exceeds the revenue-neutral rates.

The public hearings could be conducted in conjunction with other required budget hearings of the taxing subdivisions. Governing bodies taking such action would be required to submit on or before September 20 to each county clerk the amount of property taxes to be levied. Taxing subdivisions not complying with the notification and public hearing requirements outlined in the bill would be required to refund to taxpayers any over-collected property taxes.

The bill also would repeal, beginning in 2021, the current property tax law applicable to cities and counties (KSA 79-2925c).

Prohibited Valuation Increases

The bill would prohibit an increase in the appraised valuation of real property solely as a result of normal repair, replacement, or maintenance of existing improvements on the property.

Property Tax Payment Delay

The bill would prohibit interest from accruing on unpaid property tax for tax year 2019 from May 10, 2020, through August 10, 2020. The tax would not be considered delinquent for that time and counties would be required to waive any costs related to delinquent property tax collection charged to taxpayers prior to August 11, 2020.

The bill would also delay, for tax year 2019 only, the preparation of a list of real estate subject to sale due to delinquent taxes until after August 10, 2020, and the publication deadline of such list would be delayed until September 1, 2020. Real estate sales of property as a result of delinquent taxes in 2020 otherwise scheduled to occur on the first Tuesday of September would be scheduled to occur on or before the fourth Monday of October.

Taxpayer Protection Act

The bill would, on and after January 1, 2021, require paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so would subject the preparer to a civil penalty of \$50 per return with a maximum of \$25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected would be deposited in the State General Fund.

The bill would authorize the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has engaged in any of the following conduct:

- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;
- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;
- Fails to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;
- Negotiates a check issued to the taxpayer by the Kansas Department of Revenue (KDOR) without the permission of the taxpayer;
- Engages in any conduct subject to any criminal penalty provided for in Chapter 79 of the Kansas Statutes Annotated or amendments thereto;
- Misrepresents the preparer's education, experience, or eligibility to practice tax preparation;
- Guarantees the payment of any tax refund or the allowance of any tax credit; or
- Engages in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill would allow the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing such injunctions, and the Secretary would be required to publish an annual report concerning such injunctions on the website of the KDOR.

Further, the bill would provide that any person, whether or not a resident of Kansas, submits to the jurisdiction of the courts of the State of Kansas for purposes of such injunctions by engaging in any conduct that could give rise to a cause of action under the Taxpayer Protection Act. The bill would provide that legal actions brought under the Act would be brought in the district court of Shawnee County. The Secretary would be permitted to enter into consent judgments with respect to violations of the Act in lieu of actions seeking injunctions.

Finally, the bill would authorize the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Taxpayer Protection Act.

Filing and Payment Extension

The bill would extend, for tax year 2019, the deadline for filing income and privilege tax returns otherwise due April 15, 2020, through July 15, 2020, to July 15, 2020. The bill would also prohibit the imposition of penalty or interest associated with such returns if the liability is paid on or before July 15, 2020.

Property Tax Payment Plans and Partial Payments

The bill would authorize county treasurers to establish partial payments and establish payment plans for all property taxes. Current law grants treasurers authority to accept partial payment for delinquent property taxes.

County Discretion Concerning Delinquent Property Tax Penalty Charges

The bill would provide that counties have discretion in refunding, crediting, or retaining any penalties and interest charged to taxpayers between May 11, 2020, and the effective date of the bill that are rendered void by this act up to the amount of \$25.

Bills Relevant to Local Government that did not become law

1. Special District Consolidation: Passed both Chambers; contents gutted for an education bill
2. Street Vacating
3. The City of Americus Bill
4. Plastic Bag Preemption
5. Broadband Task Force Recommendations
6. State Fire Marshal Bill
7. Amazon Robot Delivery Bill
8. Anti-Discrimination Bill (would have added sexual orientation and gender identity)
9. Appraisal Cycles Bill—would have switched to appraisals every 3 years
10. Abortion Amendment
11. Constitutional Amendment for Transportation Funding
12. Electing Appraisers Bill
13. Hair Discrimination Bill
14. Gun Manufacturer Discrimination Bill
15. In God We Trust Bill
16. AG's Bill preempting contingency fee arrangements
17. Medicaid Expansion
18. Occupational Licensing Bill
19. Pole Siting Restrictions Bill giving state regulators more oversight of transmission lines installed in cities

- 20. Police Shootings KORA Bill
- 21. LATVR Bill
- 22. Sports Wagering
- 23. STAR Bonds Bill---a one year extension of current program was in budget bill
- 24. Tobacco 21
- 25. Anti-Vaccine Bill

memo

TO: City Commission
CC: Mark McAnarney, City Manager
FROM: Christina Montgomery, City Attorney
DATE: June 18, 2020
SUBJECT: Life Time Dirty Kanza Sponsorship Agreement

The City Commission has a history of partnering with Dirty Kanza to provide financial support and promote tourism within the City. In 2018, the Dirty Kanza event was acquired by Life Time. During the 2020 appropriations process, the Commission approved an appropriation request for Dirty Kanza in the amount of \$25,000.00. This year Life Time has requested that the City sign a Sponsorship Agreement to memorialize that commitment of financial support and in exchange, guarantees specific sponsorship benefits to the City including various types of marketing including website, email, social media, print media, event day signage, and PA announcements.

Under these terms, the appropriations payment is due in August. If the Dirty Kanza event is cancelled after the City has submitted payment, Life Time will refund the entire amount of the payment back to the City.

LIFE TIME®

HEALTHY WAY OF LIFE

SPONSORSHIP AGREEMENT

This Sponsorship Agreement is made between:

Life Time, Inc. and its affiliates ("Life Time")	City of Emporia ("Sponsor")
Address: 2902 Corporate Place Chanhassen, MN 55317	Address: 104 East 5th Avenue Emporia, KS 66801
Signature: <i>Arik Rudolph</i> for and on behalf of Life Time.	Signature: for and on behalf of Sponsor.
Name: Arik Rudolph	Name: Lane Massey
Job Title: Senior Director	Job Title:
Date: 5/26/2020	Date:

Together referred to as the "Parties" and each individually as a "Party".

The Sponsorship Agreement ("Agreement") consists of the following:

1. Sponsorship Agreement
2. Part 1 – Commercial Terms
3. Part 2 – Life Time Sponsorship Terms and Conditions

Background

Life Time is an organizer and promotor of events. Sponsor desires to become a sponsor of these events to advertise its products or services.

The Parties hereto agree as follows:

1. **Terms and Conditions.** Life Time's Sponsorship Terms and Conditions apply to this Agreement, located at <https://www.lifetime.life/media.html>. In the event of a conflict between the Sponsorship Terms and Conditions and this Sponsorship Agreement, the terms of this Agreement control.
2. **Termination.** Neither a termination notice nor a termination will waive any of the terminating Party's rights or remedies. Either Party may end this Agreement with immediate effect upon written notice to the other Party, if the other Party becomes bankrupt, makes an arrangement or assignment in favor of a creditor, goes into liquidation or administration, has a receiver or manager appointed to manage its business, or any analogous event occurs. Either Party may end this Agreement immediately upon written notice to the other Party if: (i) a Party commits a material breach of this Agreement which is capable of remedy and is not remedied within thirty (30) days of written notice from the first Party; or (ii) A Party commits a material breach of this Agreement which is not capable of remedy.

Contract No.: 2019-24399

3. **Notices.** All notices and correspondence under this Agreement will be delivered using a method providing for proof of delivery and sent to the address listed above, or such other address if designated in writing.

**PART 1
COMMERCIAL TERMS**

Term	<p>This Agreement begins on 09/01/2020 and will terminate on 09/31/2020 ("Term").</p> <p>Event sponsorship benefits terminate the day after each individual event.</p>
Sponsor Accounting Contact Information	<p>City of Emporia</p> <p>Mark McAnarney, 104 East 5th Avenue, Emporia, KS 66801 Email: mmcanarney@emporia-kansas.gov Phone: 620-343-4251</p>
Sponsorship Level	Official; Presenting sponsor of the All Things Gravel Expo
Sponsorship Fees	<p>In consideration for all of Life Time's undertakings hereunder and for the rights granted to Sponsor, Sponsor will pay to Life Time and Life Time will accept the guaranteed sum of \$25,000.00 cash ("Sponsorship Fee") to be paid to LTF Triathlon Series, LLC, 2902 Corporate Place, Chanhassen, MN 55317, Attn: Accounts Receivable—Media, as follows:</p> <p>Payment Schedule:</p> <p style="text-align: center;"><i>\$25,000.00 to be invoiced in July 2020 due Net45 after receipt of invoice.</i></p>
Payment Terms	<p>Sponsor will pay Life Time via ACH or check.</p> <p>City Commission has approved payment of funds through its appropriations procedure. The City may reduce the amount of funds authorized if budget restrictions or reductions are placed on the funds utilized for this agreement due to national, local or state emergency; "acts of god"; or short falls in collection of revenue. In the event that the City reduces the payment made to Life Time, Life Time will have the right, in its sole discretion, to reduce or cancel the entitlements the City receives under this Sponsorship Agreement.</p>
Event Cancellation	In the event that the Dirty Kanza event by Life Time is cancelled, whether due to the COVID-19 pandemic or other force majeure event, and such cancellation occurs after Sponsor has already paid the Sponsorship Fee, Life Time shall refund the entirety of the Sponsorship Fee to Sponsor.
Sponsor Obligations	If Sponsor delays, hinders, or fails to activate Sponsor entitlements, or fails to comply with Sponsor responsibilities outlined in this Agreement, Sponsor will not receive a refund in the event Life Time is unable to deliver any entitlements as per the terms of this Agreement.
Currency	USD (\$)

LIFE TIME ATHLETIC EVENTS

- i. **Event(s):** Dirty Kanza (DK)
- ii. **Sponsorship Designation:** Sponsor designated as an official sponsor of Dirty Kanza and will be granted exclusivity in the category of City Government.
- iii. **Logo Rights/Usage:** Sponsor granted rights to Dirty Kanza and All Things Gravel Expo logo for use in Sponsor's advertising and promotions with pre-approval from Life Time.
- iv. **Website:** Sponsor logo included on event website where family of sponsors is listed with a link to the Sponsor's website or designated landing page for the duration of the contract term.
- v. **Email Marketing:** Sponsor logo included on the balance of Dirty Kanza email marketing of where family of sponsors is listed.
- vi. **Email Marketing Promotional Content:** Sponsor content included in 2 Dirty Kanza Event emails. Specs provided by Life Time. Sponsor to submit content. Deadlines apply.
- vii. **Social Media:** Sponsor to receive 1 social media posts. Sponsor to submit content. Deadlines apply.
- viii. **Print Marketing:** Sponsor logo included on the balance of print marketing for the 2020 events where family of sponsors is listed for Dirty Kanza. Deadlines apply.
- ix. **Dirty Kanza Magazine:** Sponsor granted logo presence in Dirty Kanza Magazine within family of sponsor logos. Deadlines apply.
- x. **Dirty Kanza Magazine Discounted Advertising:** Sponsor granted 30% discount for advertising in DK Magazine (4,000 copies).
- xi. **Event-Day Signage** (provided by Life Time/Dirty Kanza): Sponsor granted the following signage provided by Life Time on Event day:
 1. Finish Chute: Granted 2 logos along the finish chute at Dirty Kanza event.
 2. Finish Truss: Granted 2 logos on finish truss at Dirty Kanza event.
- xii. **Athlete Participant Bags:** Sponsor granted rights to provide samples or branded premiums in participant bags of registered athletes or at packet pick up where offered. No liquids or paper inserts allowed. Inserts must be pre-approved. Restrictions and deadlines apply. Deadline to receive all inserts is August 3, 2020.
- xiii. **PA Announcements:** Sponsor granted frequent PA announcements on Event race day.
- xiv. **Race Entries:** Sponsor granted 2 complimentary race entries to Dirty Kanza. DKXL excluded. Deadlines apply.
- xv. **Signature Event Activation:**
 1. **Sponsor Designation:** Sponsor designated presenting sponsor of the All Things Gravel Expo.
 2. **Composite Logo:** Life Time Creative Services Team will create a Primary Composite Logo which accurately positions Sponsor as Presenting Sponsor of the All Things Gravel Expo as outlined in Life Time Event Partnership Identity Standards.
 3. **Composite Logo Inclusion:**
 - i. Expo exhibitor information page
 - ii. Expo information page on DK website
 - iii. Online event schedule
 - iv. Exhibitor credentials
 - v. Official expo documents and manuals
 - vi. Select Expo directional signage.
 - vii. DK Magazine

PART 2

LIFE TIME SPONSORSHIP TERMS AND CONDITIONS

These Sponsorship Terms and Conditions govern your sponsorship arrangement with Life Time, Inc. "We", "our", and "Life Time" mean Life Time, Inc. and our affiliates; "you" and "your" mean the Sponsor identified in the Sponsorship Agreement (the "**Agreement**"). The Agreement identifies the Sponsorship benefits, the quantities, charges, and other details of your order. The Agreement also refers to documents which may apply to the products or professional services you selected. The Sponsorship Agreement above and these Sponsorship Terms and Conditions constitute the complete agreement for the City of Emporia's Sponsorship of the Event and supersede any prior discussions or representations solely regarding the Sponsorship. If the terms of the Sponsorship Agreement above are different from these Sponsorship Terms and Conditions, the Sponsorship Terms and Conditions will have priority. This Agreement does not take precedence over any additional Agreement between the Parties as it relates to terms outside of the Sponsorship Agreement..

1. **License Grant and Use of Sponsor Marks.** Sponsor grants to Life Time, a revocable, non-exclusive, royalty-free license to use Sponsor's designated marks including but not limited to its trademarks, trade names, slogan, logo or other identification ("**Sponsor Marks**") in association with the Events as further set forth in the Agreement. Life Time agrees that it has no further right, title, or interest in or to any Sponsor Marks except the right to use the same in accordance with terms and conditions of the Agreement. Life Time further agrees that any such Sponsor Marks remain the sole property of Sponsor. Sponsor will provide to Life Time the artwork of the Sponsor Marks necessary for use at the Events.
2. **License Grant and Use of Life Time Marks.** During the term of the Agreement, Life Time grants to Sponsor, a revocable, non-exclusive, non-transferable, non-sub licensable, royalty free license to use Life Time's designated trademark(s), trade name, slogan, logo or other identification ("**Life Time Marks**") to promote Sponsor's participation in the Events. Sponsor will not use any Life Time Marks without Life Time's prior written consent and approval. Sponsor acknowledges that it has no proprietary rights in any Life Time Marks and all Life Time Marks remain the sole property of Life Time. Sponsor will abide by all Life Time Mark usage guidelines.
3. **Advertising Terms and Conditions.**
 - a. Life Time will notify Sponsor of any additional fees required to convert or format advertising collateral that does not meet the advertising specifications found in Life Time's Media Kit. Sponsor in its own discretion may determine whether or not to proceed with additional conversion or formatting of advertising collateral. If Sponsor does not approve inclusion in advertising collateral by deadline provided, Life Time has the right to exclude Sponsor from collateral. Sponsor is responsible for any shipping expenses and other transportation costs associated with advertising collateral outside of normal production and delivery, including shipping of any samples or activation materials.
 - b. Life Time is solely responsible for the production, preparation, and delivery of all advertising collateral. Sponsor must submit a sample of all collateral to Life Time prior to publication or in-center display. Life Time may reject, in its reasonable discretion, any advertisement if deemed improper or non-compliant. Life Time may also insert the word "Advertisement" on any collateral which Life Time determines to be reasonably necessary under consumer protection law.
 - c. Any advertising collateral produced by Life Time is the sole property of Life Time and will not be reproduced by Sponsor for any reason without the prior written consent of Life Time.
 - d. Sponsor agrees to meet all Media Kit timelines or closing dates for advertising collateral. If missed, Life Time may continue using previous collateral.

- e. Life Time posts, removes, or replaces advertising collateral between the first (1st) and third (3rd) of each month. Life Time is not obligated to post, remove, or replace advertising collateral at any other time of the month, including if Sponsor misses any creative deadlines agreed to between the parties.
4. **Insurance.** Sponsor agrees to maintain commercially reasonable insurance coverage, including at least comprehensive general liability and advertising injury coverage with limits of two million dollars (\$2,000,000) in the aggregate to cover damages that arise from Sponsor's performance solely under this Sponsorship Agreement. Sponsor agrees to provide proof of insurance upon Life Time's request. Life Time agrees to maintain commercially reasonable insurance coverage, including at least comprehensive general liability with limits of two million dollars (\$2,000,000) in the aggregate. Life Time will provide Sponsor with proof of insurance upon Sponsor's written request.
5. **Suspension.** If any undisputed payment due is not paid within ten (10) business days of its due date, or Sponsor fails to perform any other obligation under the Agreement, Life Time may suspend its performance immediately, without cost or penalty, and without refund until Sponsor corrects the failure. No suspension will extend the term in the Agreement, or be grounds for termination, unless the suspension lasts more than thirty (30) days.
6. **Representations, Warranties, and Indemnification.** Sponsor represents and warrants that it has the proper rights to all advertising collateral submitted to Life Time. Sponsor agrees to comply with all applicable laws and regulations during the Agreement. Sponsor also expressly assumes complete responsibility and liability for all advertising collateral submitted, printed, displayed, broadcasted, or otherwise published in connection with the Agreement. Sponsor agrees to indemnify, defend, and hold harmless Life Time, its officers, directors, agents, and employees from any and all claims, liability, loss, damage, expense, or costs (including reasonable attorneys' fees) incurred from claims of trademark, trade name, patent, copyright, proprietary right, right of privacy or false or misleading advertising violations resulting from Sponsor's advertising collateral.
7. **LIABILITY PRINCIPLES.**
- a. **LIMITATION OF LIABILITY.** IN NO EVENT WILL LIFE TIME BE LIABLE FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER IN CONTRACT OR TORT, EVEN IF SPONSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AS IT PERTAINS SOLELY TO THIS SPONSORSHIP AGREEMENT BETWEEN THE PARTIES, AND DOES NOT EXTEND TO ANY ADDITIONAL AGREEMENTS BETWEEN THE PARTIES OR SITUATIONS THAT OCCUR OUTSIDE OF THIS AGREEMENT.
- b. **MAXIMUM LIABILITY.** IN NO EVENT WILL LIFE TIME'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT EXCEED THE SPONSORSHIP FEE PAID TO LIFE TIME (I) DURING THE PRIOR TWELVE (12) MONTHS UNDER THE AGREEMENT, OR (II) IF THE TERM IS LESS THAN ONE (1) YEAR, THE AVERAGE AMOUNT OF FEES PAID PER MONTH MULTIPLIED BY TWELVE (12). THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT. THIS LIMITATION OF LIABILITY PERTAINS SOLELY TO THIS SPONSORSHIP AGREEMENT BETWEEN THE PARTIES AND DOES NOT EXTEND TO ANY ADDITIONAL AGREEMENTS BETWEEN THE PARTIES OR SITUATIONS THAT OCCUR OUTSIDE OF THIS AGREEMENT.
8. **Assignment.** Sponsor will not assign, transfer, or delegate its responsibilities herein to any third party without the prior written consent of Life Time.
9. [INTENTIONALLY OMITTED].
10. [INTENTIONALLY OMITTED].
11. **Independent Contractors.** Life Time's relationship with Sponsor is that of an independent contractor, and nothing contained in the Agreement shall be construed as establishing an employer/employee relationship, partnership, or joint venture between Sponsor and Life Time. Neither Party has the authority to act for or to bind the other Party in any way, or to represent that it is responsible for the acts, debts, liabilities, or omissions of the other Party.
12. **Conflicts of Interest.** Life Time has a policy prohibiting conflicts of interest, except under guidelines approved by the Life Time's Board of Directors. A "Conflict of Interest" exists when a person's private interest interferes

in any way with the interests of Life Time. It is Life Time's policy that (i) employees should avoid any direct or indirect business connection with the customers, suppliers, and competitors, except on behalf of Life Time; (ii) Life Time employees are not allowed to work simultaneously for a competitor, customer, or supplier of Life Time; and (iii) Life Time employees should not receive improper personal benefits (directly or indirectly, such as through a family member) as a result of the employee's position with Life Time. Sponsor is not aware of any relationship or arrangement that violates Life Time's policy and agrees that it will not knowingly take any action that would result in such a violation.

13. **Bribery and Corruption.** Life Time has a comprehensive anti-bribery policy and program. Sponsor will comply with all applicable federal, state, and local laws and regulations relating to anti-bribery and anti-corruption and will not give or receive any bribes, including in relation to public officials.
14. **Governing Law.** The Agreement shall be governed and construed in accordance with the laws of the State of Kansas, without regard to principles of conflict of laws.
15. **Data Processing.** Sponsor will comply with all applicable federal, state, and local laws and regulations regarding the processing, protection, notification, and security of the data. In the event that a data breach occurs that relates to the goods or services Life Time is utilizing, Sponsor will notify Life Time within three (3) days of such breach.
16. **Force Majeure.** If the Event, or any portion thereof, are cancelled or omitted because of war, an Act of God, public emergency or necessity, legal restrictions, labor disputes, strikes, boycotts, mechanical or electrical breakdowns, or for any other reason beyond the reasonable control of Life Time, these cancellations or delays do not constitute a breach of the Agreement. If cancelled, Life Time, in its absolute and sole discretion, may (i) reschedule the Event or (ii) refund any applicable cash portion of the Sponsorship Fee, less the value of all Sponsor Benefits provided prior to cancellation.
17. **Authority.** Life Time and Sponsor each individually represent and warrant that it has full power and authority to enter into the Agreement and to perform all of the obligations hereunder without violating the legal or equitable rights of any third party.
18. **Amendments.** Any waivers, amendments, or modifications to the Agreement must be agreed upon in writing by both Parties.
19. **Captions and Headings.** The captions and section headings used in the Agreement are for convenience of reference only and will not affect the construction or interpretation of the Agreement.
20. **Successors and Assigns.** The Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
21. **Survival.** The obligations set forth in Paragraph 12 (Conflicts of Interest) and 16 (Force Majeure) will survive for a period of one (1) year following the termination of the Agreement.
22. **Counterparts.** The Agreement may be executed in any number of counterparts, each of which is deemed to be an original, but all of which together constitute one and the same instrument. An electronic signature or a facsimile or scan of any original signature transmitted by one Party to the other Party is effective as if the original was sent to the other Party.
23. **Electronic Signatures.** Any electronic signature of a Party, whether encrypted or signed, scanned, and uploaded, is considered valid and effectively binds the Party to the Agreement. An electronically signed document, including the Agreement, will be deemed (i) "written" or "in writing", (ii) signed, and (iii) constitutes a record established and maintained in the ordinary course of business and an original written record when printed from electronic files.
24. **No Waiver; Severability.** The failure of either Party to insist upon the strict performance of any provision of the Agreement or to exercise any election will not be construed as a waiver or relinquishment for the future of such provision or election. No waiver or modification by any Party shall have been deemed to have been made unless expressed in writing by such Party. If any provision of the Agreement is found to be invalid, illegal or unenforceable, the remaining provisions remain in full force if the essential provisions of the Agreement for each Party remain valid, legal and enforceable.